

NO. PD-1340-18

**IN THE
COURT OF CRIMINAL APPEALS
OF TEXAS**

FILED
COURT OF CRIMINAL APPEALS
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CHRISTOPHER MIRANDA

APPELLANT

V.

THE STATE OF TEXAS

APPELLEE

THE STATE'S BRIEF ON PETITION FOR DISCRETIONARY REVIEW

**FROM THE COURT OF APPEALS, EIGHTH DISTRICT OF TEXAS
CAUSE NUMBER 08-15-00349-CR**

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TRIAL COURT: 120th District Court of El Paso County, Texas, Hon. Maria Salas-Mendoza, judge presiding

COURT OF APPEALS: Eighth Court of Appeals, Honorable Chief Justice Ann Crawford McClure, Justice Yvonne T. Rodriguez, and Justice Gina Palafox

TABLE OF CONTENTS

IDENTITY OF PARTIES AND COUNSEL.	ii
INDEX OF AUTHORITIES.	v
STATEMENT OF THE CASE AND PROCEDURAL HISTORY.	vi-vii

GROUND FOR REVIEW

In holding the evidence legally insufficient to support two of Miranda’s convictions, the Court of Appeals did not follow this Court’s case of *Miller v. State*, 457 S.W.3d 919 (Tex.Crim.App. 2015), concerning the closely-related-crimes exception to the corpus-delicti rule, improperly holding that the exception did not apply because the temporal relationship of one year between the offenses was too long, even though they were all part of a single criminal episode, and there were multiple victims that were not aware of each other.

STATEMENT OF FACTS.	1-5
SUMMARY OF THE STATE’S ARGUMENTS.	6-7

ARGUMENT AND AUTHORITIES

Where, as here, a sexual predator serially preys on underage students under his control over a 13-month period, his extra-judicial confession to such criminal episode, corroborated by one of the students who testified in full as to the crimes committed against her, and further corroborated by an incriminating letter written to another of the students, should satisfy temporal proximity and the purpose of the corpus-delicti rule that no one should be convicted of crimes that did not occur, such that the convictions reversed by the court of appeals should be affirmed.

PRAYER.	18
SIGNATURES.	18

CERTIFICATE OF COMPLIANCE.....	19
CERTIFICATE OF SERVICE.	19

INDEX OF AUTHORITIES

CASES

<i>Carrizales v. State</i> , 414 S.W.3d 737 (Tex.Crim.App. 2013).	8
<i>Fisher v. State</i> , 851 S.W.2d 298 (Tex.Crim.App. 1993).	9
<i>Gribble v. State</i> , 808 S.W.2d 65 (Tex.Crim.App. 1990).	9-10, 13
<i>Miller v. State</i> , 457 S.W.3d 919 (Tex.Crim.App. 2015).	8-9, 11-15, 17
<i>Miranda v. State</i> , No. 08-15-00349-CR, 2018 WL 5862160 (Tex.App. – El Paso November 9, 2018, pet. granted).	vii, 11-12
<i>Nisbett v. State</i> , 552 S.W.3d 244 (Tex.Crim.App. 2018).	9
<i>Pennsylvania v. Taylor</i> , 574 Pa. 390, 831 A.2d 587 (Pa. 2003).	14
<i>Pennsylvania v. Verticelli</i> , 550 Pa. 435, 706 A.2d 820 (Pa. 1998).	14, 16
<i>Rocha v. State</i> , 16 S.W.3d 1 (Tex.Crim.App. 2000).	10, 13
<i>Salazar v. State</i> , 86 S.W.3d 640 (Tex.Crim.App. 2002).	9-11, 13
<i>Smith v. State</i> , 363 S.W.2d 277 (Tex.Crim.App. 1963).	8

STATUTES AND RULES

TEX. PENAL CODE §3.01.	15
TEX. PENAL CODE §3.02.	15
TEX.R.APP.P. 9.10(a, b, d).	vi, 3
TEX.R.EVID. 401.	10

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Appellant, Christopher Miranda (hereinafter Miranda), was a high school gymnastics coach in El Paso, and his convictions stem from having sexual intercourse with two of his underage female gym students, Pxxxxxxx Vxxxxxxx (hereinafter PV) and Kxxxxxx Rxxx (hereinafter KR),¹ two students enrolled at Eastwood High School in El Paso where Miranda coached. (RR3: 298-303, 306-07; RR4: 24, 26).² Miranda was convicted by a jury on October 15, 2015, of the following offenses: (1) count 1, improper relationship (sexual intercourse) between educator and student (PV); (2) count 3, improper relationship (sexual intercourse) between educator and student (KR); (3) count 5, sexual assault of a child (KR); (4) and count 7, sexual performance (sexual intercourse) by a child (PV). (CR: 303-14, 329-36; RR5: 94-96). The next day, after a hearing on punishment, the jury assessed punishment as follows: (1) count 1, improper relationship between educator and student, 10 years' confinement TDCJ, probated; (2) count 3, improper relationship between educator and student, 4

¹ The names of these two victims, who were minors, age 16, at the time the offenses here were committed, (RR4: 119), are redacted pursuant to the requirements of rule of appellate procedure 9.10 concerning privacy protection for documents filed in criminal cases. *See* TEX.R.APP.P. 9.10(a, b, d).

² Throughout this brief, references to the record will be made as follows: clerk's record, "CR" and page number; reporter's record, "RR" and volume and page number; exhibits, "RR" and volume number followed by "SX" or "DX" and exhibit number.

years' confinement TDCJ; (3) count 5, sexual assault of a child, 10 years' confinement TDCJ, probated; and (4) count 7, sexual performance by a child, 2 years' confinement TDCJ. (CR: 303-14, 350-53; RR6: 245-47). The trial court sentenced Miranda the same day in accordance with the jury's verdicts. (RR6: 249-50). Miranda timely filed a motion for new trial on October 28, 2015, that was overruled by operation of law. (CR: 382-83). Notice of appeal was timely filed on November 16, 2015. (CR: 89-91). The trial court certified the right to appeal. (CR: 358).

On November 9, 2018, in an unpublished opinion, the Eighth Court of Appeals affirmed Miranda's convictions and sentences as to the KR counts, count III (improper relationship) and count V (sexual assault of a child), but reversed and rendered a judgement of acquittal as to the PV counts, count I (improper relationship) and count VII (sexual performance by a child). *See Miranda v. State*, No. 08-15-00349-CR, 2018 WL 5862160 (Tex.App. – El Paso November 9, 2018, pet. granted)(not designated for publication). No motion for rehearing was filed.

The State timely filed its petition for discretionary review (PDR) on December 7, 2018 (transmitted on that day and accepted by this Court on December 11, 2018). This Court granted the State's PDR on April 10, 2019, with the notation that oral argument will not be permitted.

GROUND FOR REVIEW

In holding the evidence legally insufficient to support two of Miranda's convictions, the Court of Appeals did not follow this Court's case of *Miller v. State*, 457 S.W.3d 919 (Tex.Crim.App. 2015), concerning the closely-related-crimes exception to the corpus-delicti rule, improperly holding that the exception did not apply because the temporal relationship of one year between the offenses was too long, even though they were all part of a single criminal episode, and there were multiple victims that were not aware of each other.

STATEMENT OF FACTS

Beatriz Zavala (hereinafter Zavala) testified that she had been an assistant principal at Eastwood High School in El Paso. (RR3: 298-99, 306-07). In February, 2013, she was approached with information about a teacher, Miranda,³ the gymnastics coach, having an inappropriate sexual relationship with a student. (RR3: 300, 302-03, 310). Zavala contacted Bobbi Russell, who dealt with employee relations for the school district (Ysleta Independent School District, YISD). (RR3: 299, 304). Russell handled concerns brought to her by school administrators, to include any improper relationship between a teacher and a student. (RR3: 304-05). Zavala stated that YISD had a policy against a teacher dating a student, much less having sexual contact with a student. (RR3: 305-06).

Bobbi Russell Garcia (hereinafter Russell, the name she went by) testified that she was director of employee relations for YISD. (RR4: 7). Her primary duty was to investigate misconduct in the workplace. (RR4: 8). Concerning sexual misconduct, she stated that: "Sexual relationships with students are not allowed at any time, by any employee of the district." (RR4: 8). When there was an allegation of misconduct, she would bring the involved employee in to see her. (RR4: 9). The involved employee would be put on administrative leave pending

³ Miranda also went by the nicknames "Mr. Sensei" and "Dorney." (RR4: 118).

the investigation. (RR4: 9). This was done to protect the students. (RR4: 9-10).

On February 21, 2013, Russell received a call from Eastwood campus administration concerning Miranda having an inappropriate relationship with a student at Eastwood High School. (RR4: 11). Miranda worked at Eastwood High School from September, 2011, until February, 2013. (RR4: 167). He began work when he was 22 years of age, and when he resigned he was 24. (RR4: 167).

Russell put him on administrative leave that same day after explaining to him that he was alleged to be having an inappropriate sexual relationship with a female student. (RR4: 13, 17). Russell stated that Miranda responded to the allegations in a written statement in his own handwriting, SX3, which statement was admitted into evidence. (RR4: 18-20; RR8: SX3). That statement, dated February 12, 2013, and signed by Miranda, denied any sexual misconduct with any student. (RR4: 19-24; RR8: SX3).

After Miranda was placed on administrative leave, Russell began her investigation. (RR4: 24). On February 14, 2013, Miranda came to see Russell again. (RR4: 25). That session was recorded. (RR4: 25). The recording of that session, SX4, was admitted into evidence. (RR4: 26-27; RR8: SX4). In that recording, Miranda again denied any improper relationship or sexual intercourse with any student. (RR8: SX4).

In a recording made about four to five minutes after SX4 was concluded, Miranda finally acknowledged that he had sexual relationships with PV and KR, two students enrolled at Eastwood High School. (RR4: 24, 26, 31). In this second recording, SX5, Miranda admitted texting sexual messages to PV, including asking her to have sex with him during the 2011-12 school year. (RR4: 29-30, 60; RR8: SX5). During KR's senior year at Eastwood High School, Miranda admitted to kissing her and having sexual intercourse with KR at KR's friend's house. (RR4: 31; RR8: SX5). He also admitted to having sexual intercourse with PV. (RR4: 31; RR8: SX5). He also admitted to having sexual intercourse with yet a third student, Ixxxxx Gxxxxx (hereinafter IG),⁴ a junior, also a student at Eastwood High School. (RR4: 31-32; RR8: SX5). Miranda had only been at Eastwood for two years. (RR8: SX5).

After the second recording, Russell told Miranda he could resign or the district would seek his termination. (RR4: 31). He chose to resign that same day. (RR4: 31, 54). Russell asked for a second written statement from Miranda, which he gave her (SX6). (RR4: 31-32). That handwritten statement by Miranda was

⁴ The name of this victim, who was a minor, age 16, at the time the offenses here were committed, (RR4: 119), is redacted pursuant to the requirements of rule of appellate procedure 9.10 concerning privacy protection for documents filed in criminal cases. *See* TEX.R.APP.P. 9.10(a, b, d). This victim also had the nickname of "Bellie." (RR4: 115-16).

admitted. (RR4: 51-52). In that statement, Miranda admitted to having sex with PV and KR. (RR4: 52-53; RR8: SX6). After Miranda gave Russell his resignation, Russell reported the information to the YISD Director of Safety, J.R. Martinez, who then contacted the El Paso Police Department. (RR4: 54-57).

Admitted through Russell by recognition of Miranda's handwriting was SX8, a letter dated September 9, 2012, written by Miranda to IG/Bellie (also Belly). (RR4: 164-65). Part of the letter stated: "Most people would think that finding love between a teacher and a student should be forbidden. I would not have it any other way, though. I really do feel that I can spend the rest of my life with you." (RR4: 166; RR8: SX8). IG's father found the letter in a book IG had given him to read. (RR4: 110-12).

KR, one of the named victims, testified. (RR4: 172). As a junior and for the first part of her senior year in high school, she attended Eastwood High School in El Paso. (RR4: 174-75). She was 16 when she met Miranda. (RR4: 176). Taking gymnastics, she was coached by Miranda. (RR4: 175).

One night, she sneaked out of her parents' house around midnight to meet Miranda. (RR4: 179-80, 217). At the time, Miranda knew she was a minor, still attending high school, still 16. (RR4: 181, 210). KR got into Miranda's car with him, and he drove her to his parents' house where he lived. (RR4: 181-84). The

two of them quietly entered the house and went to Miranda's bedroom. (RR4: 184-85). After a while in Miranda's bedroom, he began kissing her, and when she told him not to, Miranda lifted KR up and put her in the middle of his bed. (RR4: 194-96). KR told Miranda to stop, but he continued to kiss her and then took her clothes off. (RR4: 197-98). Miranda then took off his clothes and got on top of KR. (RR4: 198-99). Miranda continued to kiss KR, and she continued telling him to stop. (RR4: 199). She was not physically fighting Miranda during all of this because he was much stronger and bigger than her. (RR4: 198). And there was no way for her to get up, as his dead weight was on top of her. (RR4: 199-200). Miranda then had sexual intercourse with KR without a condom. (RR4: 201-02). At some point, Miranda pulled out and ejaculated on the side of the bed. (RR4: 202). Miranda drove KR around until 3 to 4 AM and then dropped her off where he had picked her up outside her home. (RR4: 206, 217).

Later, when called into an office at Eastwood, KR initially denied what had happened to her, but finally admitted what had happened. (RR4: 214, 216, 222, 226-27). She testified that it was embarrassing for her, and felt she would lose her friends who were close to Miranda. (RR4: 223, 232). Word of the allegations got out, and KR was not able to stay at Eastwood to finish her senior year because of harassment. (RR4: 225-26, 228).

SUMMARY OF THE STATE’S ARGUMENTS

Under this Court’s cases of *Gribble*, *Rocha*, and *Salazar*, the testimony of KR rendered the corpus delicti of all of the crimes, including those against PV, more probable than they would be without the evidence, such that evidence exists outside of the extra-judicial confession which, considered alone or in connection with the Miranda’s confessions, shows that these crimes actually occurred. And, also, there is the letter written by Miranda to IG which added to KR’s testimony and showed that Miranda had criminal designs on his underage female students and repeatedly targeted these young women so as to sexually abuse them.

Once corroborating evidence fulfills the purpose of the corpus-delicti rule, namely, assuring that the crime confessed to actually occurred, the rule is satisfied, and convictions should not be set aside. KR’s testimony, buttressed by Miranda’s incriminating letter to IG, provides the necessary corroborating evidence here for all of Miranda’s convictions.

When cases can be and are prosecuted as part of a single criminal episode in one criminal action, as here, and the evidence corroborates the defendant’s extra-judicial confession as to one of the offenses, KR here, the purpose of the corpus-delicti rule has been satisfied, namely, the avoidance of convictions for crimes that did not occur, and this Court should hold the evidence sufficient for all convictions in the criminal episode as the corpus-delicti rule has been met. Looked at another way, if offenses are already within the penal code’s definition of a single criminal episode – they are temporally related – such that if the evidence of one offense in that episode corroborates the defendant’s extra-judicial confession, the corpus-delicti rule has been satisfied as to all convictions arising out of the criminal episode. Such is the case here.

Alternatively, because Miranda sexually abused three young women over a 13-month period, which is still a fairly short time in this type of case, this Court should hold that, in this situation, the

temporal-proximity test of *Miller* is met. There could hardly be more closely related cases both in terms of time and fact pattern, where offenses occurred within months of each other and involved the serial sexual preying of a teacher on his 16-year-old female students.

ARGUMENT AND AUTHORITIES

WHERE, AS HERE, A SEXUAL PREDATOR SERIALLY PREYS ON UNDERAGE STUDENTS UNDER HIS CONTROL OVER A 13-MONTH PERIOD, HIS EXTRA-JUDICIAL CONFESSION TO SUCH CRIMINAL EPISODE, CORROBORATED BY ONE OF THE STUDENTS WHO TESTIFIED IN FULL AS TO THE CRIMES COMMITTED AGAINST HER, AND FURTHER CORROBORATED BY AN INCRIMINATING LETTER WRITTEN TO ANOTHER OF THE STUDENTS, SHOULD SATISFY TEMPORAL PROXIMITY AND THE PURPOSE OF THE CORPUS-DELICTI RULE THAT NO ONE SHOULD BE CONVICTED OF CRIMES THAT DID NOT OCCUR, SUCH THAT THE CONVICTIONS REVERSED BY THE COURT OF APPEALS SHOULD BE AFFIRMED.

By 1963, the corpus-delicti rule was well entrenched in the criminal jurisprudence of Texas, with this Court noting that it was “well settled”:

It is well settled that a confession, alone, is not sufficient to support a conviction. It must be corroborated. There must be proof that the offense was committed—that is, the corpus delicti must be proved. The confession may be used to aid in proving the corpus delicti but is not alone sufficient.

Smith v. State, 363 S.W.2d 277, 279 (Tex.Crim.App. 1963).⁵ It is a rule of evidence sufficiency where there is an extra-judicial confession. *Miller v. State*, 457 S.W.3d 919, 924 (Tex.Crim.App. 2015). Quite simply, the rule can be defined as one that requires that a defendant’s extra-judicial confession be corroborated by some other evidence showing that a crime has been committed.

⁵ This Court has noted that the rule is a common-law, judicially created doctrine, dating back to a 17th century English case. *See Carrizales v. State*, 414 S.W.3d 737, 740-41 (Tex.Crim.App. 2013).

Nisbett v. State, 552 S.W.3d 244, 263 (Tex.Crim.App. 2018). Stated another way, the corpus delicti of a crime—any crime—simply consists of the fact that the crime in question has been committed by someone. *Fisher v. State*, 851 S.W.2d 298, 303 (Tex.Crim.App. 1993). The corpus-delicti rule requires some corroboration of the two elements—an injury or loss and a criminal agent—although it does not also require any independent evidence that the defendant was the criminal culprit. *Salazar v. State*, 86 S.W.3d 640, 644 (Tex.Crim.App. 2002).

The reason for the corpus-delicti rule ties in to what is required to satisfy it: To assure that no person is convicted without *some* independent evidence showing that the very crime to which he confessed was actually committed by someone. *Fisher*, 851 S.W.2d at 302 n. 3; *Gribble v. State*, 808 S.W.2d 65, 71 (Tex.Crim.App. 1990) (plurality op.), *cert. denied*, 501 U.S. 1232, 111 S.Ct. 2856, 115 L.Ed.2d 1023 (1991). Its purpose is to ensure that a person is not convicted of a crime that never occurred, based solely upon that person's extra-judicial confession. *Salazar*, 86 S.W.3d at 644. Stated another way, the rule provides essential protection for those defendants who would confess to an imaginary crime. *Miller*, 457 S.W.3d at 926.

The quantum of independent evidence necessary to corroborate the corpus

delicti in a criminal prosecution relying upon the extra-judicial confession of an accused need not be great. *Gribble*, 808 S.W.2d at 71-72. So long as there is some evidence that renders the corpus delicti more probable than it would be without the evidence, the essential purposes of the rule have been served. *Id.* at 72. The *Gribble* standard on the quantum of evidence needed to satisfy the corpus-delicti rule was reaffirmed by this Court in *Rocha v. State*, 16 S.W.3d 1 (Tex.Crim.App. 2000), holding that all that is required is that there be some evidence that renders the commission of the offense more probable than it would be without the evidence. *Rocha*, 16 S.W.3d at 4. Under this more-probable standard, it appears that if evidence is logically relevant, and thus admissible, the corpus-delicti rule is satisfied. *See* TEX.R.EVID. 401 (“Evidence is relevant if it has any tendency to make a fact more...probable than it would be without the evidence.”). Thus, if the State has introduced some evidence that logically tends to show that a criminal offense was committed outside of the defendant’s extra-judicial confession, the rule should be satisfied. As this Court stated in *Salazar*: “[I]t satisfies the corpus delicti rule if some evidence exists outside of the extra-judicial confession which, considered alone or in connection with the confession, shows that the crime actually occurred.” *Salazar*, 86 S.W.3d at 645. Thus, if the corroborating evidence fulfills the purpose of the corpus-delicti rule,

namely, assuring that the crime confessed to actually occurred, the rule is satisfied. *See id.*

As a class of evidence that satisfies the corpus-delicti rule, this Court in *Miller* adopted the closely-related-crimes exception. *See Miller*, 457 S.W.3d at 927. The Court adopted a temporal-connection requirement that needed to be sufficiently proximate to invoke the closely-related-crimes exception. *See Miller*, 457 S.W.3d at 927, 929. In *Miller*, the three-month-old victim was sexually abused by her father on four different occasions, and the father confessed to the four instances of abuse, but only one occasion could be corroborated by DNA. *See Miller*, 457 S.W.3d at 920-21. The abuse happened over a 27-day period and only to the one infant victim. *Id.* at 920. This Court held that the corpus-delicti rule was satisfied. *See Miller*, 457 S.W.3d at 929.

Here, in this case, the sexual abuse involved three young women, the gym students of Miranda. The State does not disagree with the court of appeals' finding that the abuse occurred over about a 13-month period. *See Miranda*, 2018 WL 5862160, at *8; (CR: 13-20). The court of appeals, in reversing the convictions regarding the victim who did not testify (PV), chose, however, to adopt a mechanistic, narrow approach in applying *Miller*, holding that since the abuse was outside of a 27-day period (or at most three months), and occurred to

three victims who were unaware of Miranda's involvement with each one of them, instead of just one victim, the closely-related-crimes exception did not apply. *See Miranda*, 2018 WL 5862160, at *8.

That cannot be the extent of the closely-related-crimes exception. Under a proper case-by-case analysis, there is no reason the exception should apply to only one victim, and surely the victims do not have to be aware of the abuse of each of the other victims. Also, an arbitrary cutoff of one to three months cannot be the time limit in which all the offenses must occur for the exception to apply.

This Court in *Miller* stated: "We also note that our research reveals no Texas case in which relief was granted because, although a defendant confessed to multiple crimes, the State could establish the corpus delicti of only one offense." *Miller*, 457 S.W.3d at 929. This is now that case. The State absolutely proved the corpus delicti of the offenses involving KR, as she extensively testified about the crimes Miranda perpetrated against her, and the Court of Appeals affirmed those convictions. *See Miranda*, 2018 WL 5862160, at *8. But the conclusively proved offenses against KR, further buttressed by the incriminating letter to IG demonstrating Miranda's lascivious intent towards his female students, were not enough to carry the day in the court of appeals concerning the jury's convictions of Miranda for the offenses involving PV, giving this Court the case it could not

find at the time that *Miller* was decided.

Under this Court's cases of *Gribble*, *Rocha*, and *Salazar*, the testimony of KR, rendered the corpus delicti of all of the crimes, including those against PV, more probable than they would be without the evidence, such that evidence exists outside of the extra-judicial confession which, considered alone or in connection with Miranda's confessions, shows that these crimes actually occurred. *Salazar*, 86 S.W.3d at 645; *Rocha*, 16 S.W.3d at 4; *Gribble*, 808 S.W.2d at 72. And, also, there is the letter written by Miranda to IG, which added to KR's testimony and showed Miranda had criminal designs on his underage female students and repeatedly targeted these young women so as to sexually abuse them. As stated above, the purpose of the corpus-delicti rule is to ensure that a person is not convicted of a crime that never occurred, based solely upon that person's extra-judicial confession. *Salazar*, 86 S.W.3d at 644. The rule provides essential protection for those defendants who would confess to an imaginary crime. *Miller*, 457 S.W.3d at 926. KR's testimony and the letter to IG provide the necessary corroborating evidence here for all of Miranda's convictions.

In *Miller*, this Court cited with approval to the Pennsylvania Supreme Court's analysis of the closely-related-crimes exception. *See Miller*, 457 S.W.3d at 926. Pertinent to *Miller*, and in regard to the temporal-relationship requirement,

that Court held that “temporally related” means “as having arisen from the same transaction.” *Pennsylvania v. Verticelli*, 550 Pa. 435, 706 A.2d 820, 824 (Pa. 1998), *abrogated on other grounds*, 574 Pa. 390, 831 A.2d 587 (Pa. 2003). And again, citing the Pennsylvania Supreme Court with approval, *see Miller*, 457 S.W.3d at 926, that Court held:

The purpose behind the corpus delicti rule is the ultimate consideration in determining whether two crimes are closely related so as to implicate the exception. Where the relationship between the crimes to which the defendant has confessed is close and the policy underlying the corpus delicti rule—to avoid convictions for crimes that did not occur—is not violated, the exception renders the confession admissible for all closely related crimes.

Pennsylvania v. Taylor, 574 Pa. 390, 831 A.2d 587, 595–96 (Pa. 2003)(emphasis added).

This Court should take what it approved in *Miller* in setting forth and discussing Pennsylvania’s closely-related-crimes exception and apply it to Texas’ penal-code provisions for prosecuting crimes in one criminal action that occur in the same criminal episode and hold that if one offense in the criminal episode is corroborated, the temporal relationship, and thus the corpus-delicti rule is satisfied. All of Miranda’s crimes against these young women, Miranda’s students, satisfy the Texas Penal Code definition of criminal episode: “ ‘[C]riminal episode’ means the commission of two or more offenses, regardless of whether the

harm is directed toward or inflicted upon more than one person...under the following circumstances: (1) the offenses are committed pursuant to the same transaction or pursuant to two or more transactions that are connected or constitute a common scheme or plan; or (2) the offenses are the repeated commission of the same or similar offenses.” TEX. PENAL CODE §3.01. Here, all of Miranda’s crimes against his three underage female students were prosecuted in the same criminal action as they occurred within the same criminal episode. *See* TEX. PENAL CODE §3.02. Establishing the corpus delicti of one offense within this single criminal episode should satisfy the closely-related-crimes exception to the corpus-delicti rule, as that is what appears to have been envisioned by this Court in the opening paragraph of *Miller*. *See Miller*, 457 S.W.3d at 920 (“We decide that a direct application of the corpus delicti rule is unnecessary when a defendant confesses to multiple offenses within a single criminal episode....”). Thus, the State submits that when cases can be, and are, prosecuted as part of a single criminal episode in one criminal action, as here, and the evidence corroborates the defendant’s extrajudicial confession as to one of the offenses, as here, the purpose of the corpus-delicti rule has been satisfied, namely, the avoidance of convictions for crimes that did not occur, and this Court should hold the evidence sufficient for all convictions in the criminal episode. Looked at another way, if offenses are

already within the penal code's definition of a single criminal episode, they are temporally related, *see Pennsylvania v. Verticelli*, 706 A.2d at 824, such that if the evidence corroborates the defendant's extra-judicial confession as to one of the offenses in that criminal episode, the corpus-delicti rule has been satisfied as to all convictions arising out of that criminal episode. That is the case here, and the court of appeals should be reversed and all convictions affirmed, specifically the two with PV as the victim.

Finally, as a practical matter and in real life, the closely-related-crimes exception should not be limited in time to a few months (and certainly not 27 days) in cases involving a serial sexual predator such as Miranda. Abuse of one victim typically happens repeatedly and in a very short period of time or very frequently over a longer period of time. But in the case of multiple victims, as here, and especially where the predator has control over the victims (like the teacher-student situation here), although the predation can occur quickly, in real life it most likely occurs first with one victim over some period of time, followed by another victim over some period of time, followed by another victim over some period of time. They do not all happen at once. Miranda sexually abused three young women over a 13-month period, which is still a fairly short period of time in this type of case, such that, alternatively, this Court should hold that, in this

situation, the temporal-proximity test of *Miller* is met. *See Miller*, 457 S.W.3d at 920-29. There could hardly be more closely related cases, both in terms of time and fact pattern where the offenses occurred within months of each other and involved the sexual preying of a teacher on his 16-year-old students. For all reasons stated, this Court should reverse the opinion and judgment of the court of appeals reversing and rendering a judgment of acquittal as to the PV convictions, counts I and VII, and reinstate and affirm those convictions.

PRAYER

WHEREFORE, the State prays that this Court reverse the opinion and judgment of the court of appeals reversing and rendering a judgment of acquittal as to the PV convictions, counts I and VII, and reinstate and affirm appellant's convictions and sentences as to those counts.

Respectfully submitted,

JAIME ESPARZA
DISTRICT ATTORNEY
34th JUDICIAL DISTRICT

/s/John L. Davis

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CERTIFICATE OF COMPLIANCE

The undersigned does hereby certify that the foregoing document contains 5,056 words (taking out the caption, statement regarding oral argument, table of contents, index of authorities, statement of the case, signature, proof of service, certification, and certificate of compliance per rule of appellate procedure 9.4(i)(1)).

/s/John L. Davis

JOHN L. DAVIS

CERTIFICATE OF SERVICE

The undersigned does hereby certify that he has registered to e-file documents through an EFSP, and the undersigned has on this day, May 3, 2019, served a copy of the State's brief through the EFSP on the attorney for appellant, that being: Veronica Teresa Lerma, 1417 Montana Ave., El Paso, Texas 79902, e-mail: vtlermalaw@gmail.com; and served a copy of the State's brief this same day on the State Prosecuting Attorney, PO Box 13046, Austin, Texas 78711-3046, email: information@spa.texas.gov.

/s/John L. Davis

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